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DODGER THEATRICALS, LTD., JB VIVA VEGAS, L.P., JERSEY
BOYS BROADWAY LIMITED PARTNERSHIP, JERSEY BOYS
RECORDS LIMITED PARTNERSHIP, SKUNK, INC. AND GETTING
HOME, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONNA CORBELLO, an individual

Plaintiff,

v.

THOMAS GAETANO DEVITO, an
individual, et al.

Defendants.

CASE NO.: 2:08-cv-00867-RCJ-PAL

**EMERGENCY MOTION BY FRANKIE
VALLI, ROBERT J. GAUDIO,
MARSHALL BRICKMAN, ERIC S.
ELICE, DES MCANUFF, MICHAEL
DAVID, DSHT, INC. DODGER
THEATRICALS, LTD., JB VIVA
VEGAS L.P., GETTING HOME, INC.,
JERSEY BOYS BROADWAY LP AND
SKUNK, INC. TO SET BRIEFING
SCHEDULE ON MOTIONS FOR
SUMMARY JUDGMENT**

First Request

Courtroom: The Hon. Robert C. Jones
Magistrate: The Hon. Peggy A. Leen

Pursuant to LR 6-1, Defendants Frankie Valli, Robert J. Gaudio, Marshall Brickman, Eric S. Elite, Des McAnuff, Michael S. David, DSHT, Inc., Dodger Theatricals, Ltd., Jersey Boys Broadway, L.P., JB Viva Vegas, L.P., Jersey Boys Records, L.P., Skunk, Inc., and Getting Home, Inc., by and through their counsel, hereby move the Court to modify the briefing schedule for eight pending Motions for Summary Judgment as outlined below. This Motion is being filed on an emergency basis, as Plaintiff's Opposition to one of the pending summary judgment motions is due on Monday, October 31, 2011 and Plaintiff is seeking an extension of time on that brief immediately, as well as an extension on other briefs in the very near future.

At the hearing on October 21, the Court set **January 20, 2012**, as the date for oral argument on these motions and instructed the parties to submit a briefing schedule within the week. See 10/21/11 hearing transcript at 79:5-19, 80:1-9 (Dkt #662). New Defendants' counsel attempted to work with Plaintiff's counsel to agree on a new schedule, but those efforts were unsuccessful. Accordingly, New Defendants propose the following schedule and provisions, in line with the specific directives that the Court offered the parties at the hearing:

1. Plaintiff's Oppositions to the Motions for Summary Judgment re: A) Intermediate Drafts (filed October 7), B) La Jolla Performances (filed October 14) and C) Michael David (filed October 13) are due **November 7, 2011**.
2. New Defendants' Replies on those three motions are due **November 23,**

2011.

3. Plaintiff's Oppositions to the Motions for Summary Judgment re: D) Copyright, E) Non-Exclusive License and F) Foreign Claims are due **November 23, 2011**.
4. New Defendants' Replies on those three motions are due **December 16, 2011**.
5. These dates are firm, and the parties must comply with these deadlines. If Plaintiff nevertheless moves to extend her time on a particular Motion and, if such extension is granted, then New Defendants' time to file a Reply on that Motion will be extended by the equivalent number of days, up to and no later than December 23, 2011.
6. If Plaintiff moves to extend time such that New Defendants' time would be pushed beyond December 23, 2011, that request will be deemed denied.
7. The seventh Motion for Summary Judgment re JB Records (the Cast Album) will follow a separate schedule; the motion was filed September 15, 2011; Oppositions were filed on October 11, 2011; and New Defendants' Reply is being filed on October 28, 2011. Briefing on that motion will then be complete.
8. Plaintiff's Motion for Summary Judgment as to Defendant DeVito: DeVito's counsel has requested that their time to Oppose this Motion be extended to **November 23, 2011**. Plaintiff's counsel did not express any disagreement with that proposed date and requested that they have until **December 16, 2011** for their Reply. These dates are consistent with the dates that the Court chose on the parallel motions.

The Court did indicate a willingness to grant Plaintiff an extension until November 23, 2011 on her opposition to the motion for summary judgment as to copyright claims and an extension as to the foreign copyright claims, but with consideration for New Defendants' counsel's reply schedule. Id. at 81:15-24. New

1 Defendants concurrently asked for additional time for their Replies on those motions
2 and the Court indicated a willingness to grant them extensions up until December 16,
3 2011. Id. 83:5-9.

4 New Defendants have selected these dates as the applicable deadlines in the
5 absence of the parties' agreement on alternative dates. Given the January 20 hearing
6 date and the intervening holidays, these are really the most reasonable options
7 available.

8 The key principles guiding this schedule are these:

- 9 1. The Court should have no less than a full month to absorb and manage
10 the eight Motions for Summary Judgment before the January 20, 2012
11 hearing – and it should have the papers *before* the holidays.
- 12 2. The Court has already indicated its approval of these dates. (At the
13 October 21 hearing, the court refused blanket extensions for Plaintiff but
14 allowed that on specific motions, Plaintiff's time could be extended until
15 November 23 with Defendants' replies due on such motions on December
16 16. Id. at 80:13-21.)
- 17 3. Defendants should have some protection against Plaintiff's practice of
18 seeking repeated extensions, which would prejudice Defendants by
19 pushing them into the holidays for their replies and would result in the
20 Court not having sufficient time to review and meaningfully analyze the
21 eight pending motions. The Court specifically stated that Plaintiff could
22 not serve Oppositions that would force New Defendants to work on their
23 Replies through the holidays.
- 24 4. Given the January 20 hearing date, these are the only dates that seem
25 reasonable and in line with the Court's directives at the October 21
26 hearing. They also do not compel Plaintiff's counsel to work through the
27

1 Thanksgiving holiday nor do they compel New Defendants' counsel to
2 work through the Christmas and New Years holiday.

3 We have discussed possible briefing schedules with plaintiff's counsel over the
4 telephone and in written exchanges. Following our discussions, on Wednesday
5 morning, we sent them the above proposed dates for the briefing schedule. We were
6 told that they would address our proposal, but have had no substantive response
7 beyond a note that they are traveling and that their lead counsel is involved in a trial.
8 We are scheduled to speak again with Plaintiff's counsel later on Friday, October 28,
9 but wanted to ensure that the Court had a proposed schedule to review within the time
10 we promised. Given that the parties have not come to an agreement on an alternative
11 schedule within the time proposed by the Court, we request that the briefing schedule
12 on the eight motions follow the Court's prior directives.

13 For the foregoing reasons, New Defendants respectfully request that the Court
14 adopt this proposed briefing schedule.

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18 LIONEL, SAWYER & COLLINS

19 /s/ David S. Korzenik
20 DAVID S. KORZENIK
21 MILLER, KORZENIK SOMMERS LLP

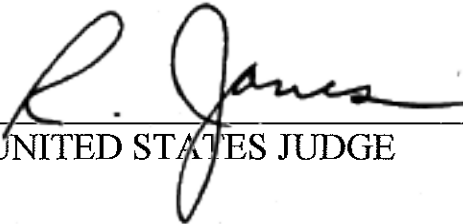
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RECORDS LIMITED PARTNERSHIP, SKUNK,
INC. AND GETTING HOME, INC.

IT IS SO ORDERED.

Dated: 11-04-2011


UNITED STATES JUDGE